5099670/2021/ESTT-I-PRR01

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Establishment–P.R.E.S.– Fixing the seniority of 1997 Public Service Commission batch AEEs before temporary AEEs appointed during the period 1990-95, duly cancelling the orders issued in G.O.Ms.No. 262, PR&RD (Estt.III) Dept., dt.17.06.2006 and G.O. Ms.No.334, PR&RD (Estt.III) Dept., dt.26.09.2011 – Orders –Issued.

PANCHAYAT RAJ & RURAL DEVELOPMENT (ESTT.I) DEPARTMENT

GO.Ms.No.71 **Dated: 05-10-2021**

Read the following:

1. G.O. Rt.No. 997, PRRD & Relief (Estt.III) Dept., dt.27.07.1996.
2. G.O. Ms.No. 234, PR&RD(Estt.III) Dept., dt.27.06.2005.
3. G.O. Ms.No. 262, PR&RD(Estt.III) Dept., dt.17.06.2006.
4. G.O. Ms.No. 388, PR&RD(Estt.III) Dept., dt.12.11.2010.
5. G.O. Ms.No.334, PR&RD(Estt.III) Dept., dt.26.09.2011.
6. G.O. Ms.No.42, PR&RD(Estt.I) Dept., dt.08.06.2016.
7. From the AP Panchayat Raj Asst. Executive Engineers Forum (1997PSCDirect Recruitees), representation dt.13.02.2019.
8. Govt.Memo.No.PRR01-PREOESTT(MISC)/8/2019-Estt.I, dt.02.03.2019.
9. From the Engineer –in- Chief, PR, A.P., Vijayawada, Letter No.Ser.III(2)/815/2014, dt.13.05.2019.

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O R D E R :

The Government, in G.O.Ms. No.89, PR & RD Department, dt.9-1-90, have sanctioned certain posts of Asst. Executive Engineers for execution of works under U.K. Assistance Programme. Subsequently in G.O.Ms. No.540, PR & RD Department dt. 30-8-90 and G.O. Ms. No. 908 PR & RD Dept., Dt. 10-8-91, 195 posts of AEEs have been sanctioned under Cyclone Emergency Reconstruction Project. These two projects are time bound and they have to be implemented on priority basis. As candidates are not available to fill up these vacancies, with the APPSC, Govt. has issued orders in G.O. Ms. No. 429, PR & RD Dept. Dt. 16-3-90 and again in G.O. Ms. No. 908, PR & RD Dept. Dt. 10-8-91 permitting the Engineer-in-Chief, P.R to fill up these vacancies from the available candidates working as Work Inspectors/D.Man/ Tracers possessing Graduate qualification of Engineering and who were earlier drafted from Employment Exchange to appoint them on temporary basis as Asst. Executive Engineers under Rule 10 (a)(i) of A.P. State & Subordinate service Rules. In G.O.Ms. No. 908, PR&RD Dept. dt. 10-8-91, it is also informed that the above appointments are purely on temporary basis and they can be terminated at any time without assigning any reasons, since the projects are temporary. Again in G.O.Ms. No. 391, PR&RD Dept. Dt. 30-6-94, Govt. have sanctioned some more posts of A.E.Es. to attend to various works under JRY/EGS/RWS etc., and in G.O. Rt. No.289 PR & RD Dept., Govt. have permitted the Engineer-in-Chief, PR to fill up the vacancies of Asst. Executive Engineers from eligible Work Inspectors/D.Man/Tracers etc. with B.E. Degree qualification.

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2. In the G.O. 1st read above, Government have observed that according to Andhra Pradesh Engineering Service Rules, the post of Asst. Executive Engineer shall be filled up through direct recruitment only. There is no provision in the said rules for recruitment to the post of Asst. Executive Engineer by promotion. The Engineer-in-Chief, PR has already notified a total number of 502 posts of Asst. Executive Engineers to the AP Public Service Commission for direct recruitment. Hence, the temporary Asst. Executive Engineers shall have to apply for their selection as Asst. Executive Engineers to APPSC. Further, the persons, who were appointed on temporary basis, in case, they are not selected by the AP Public Service Commission and earlier appointed for the post of Work Inspectors/D.Man/Tracers shall be reverted back to the post from which they were appointed as Asst. Executive Engineers on temporary basis. Accordingly, Government have rejected the request of the Asst. Executive Engineers, who were appointed purely on temporary basis under Rule 10(a)(i) of A.P. State & Subordinate Service Rules, for regularization of their services as Asst. Executive Engineers by excluding their appointment from the purview of the AP Public Service Commission.

3. Based on the subsequent requests of the temporary AEEs and orders of the APAT dt.19.02.1996 in OAs No.5730/95, 6270/95, 6861/95 and other OAs., the Cabinet Sub-Committee has been re-constituted in G.O.Ms.No.29, PR&RD Dept., dt.01.02.2001 to examine the demands of A.E.s/AEEs associations. In so far as regularization of services of the temporary AEEs working in the Department who were appointed by transfer from the categories of Draughtsmen/Tracer/Work Inspectors during the period from 1990-95, the Committee resolved to obtain fresh opinion of GAD and Law Departments and also APPSC before a final decision is taken.

4. Accordingly, in the G.O. 2nd read above, orders were issued directing that the services of all temporary A.E.Es. who are appointed in between 1990-95 should be regularized below the last regular candidate in the category of A.E.Es. Further, directed that all temporary appointments made in between 1990-95 and continuing as such as on the date shall be excluded from the purview of Andhra Pradesh Public Service Commission under the proviso to clause 3 of the Article 320 of the Constitution of India.

5. In the G.O. 3rd read above, orders were issued in partial modification of the orders issued in G.O.Ms. No.234, PR&RD(Estt.III) Dept., dt.27.06.2005, and directed the Engineer-in-Chief, PR to regularise the services of the Assistant Executive Engineers who were appointed during the period 1990-92 below the last regular Assistant Executive Engineer appointed through APPSC prior to Act.2/1994.

6. In the G.O. 5th read above, orders were also issued extending the similar benefit of the seniority to the candidates appointed from 1993 to 1995 on par with the candidates appointed from 1990-1992 as ordered in G.O.Ms.No.262, PR&RD(Estt.III) Deptt., dt.17.06.2006, subject to outcome of W.Ps pending in the Hon'ble High Court of Andhra Pradesh.

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7. In the G.O. 4th read above, orders were issued permitting the ENC, PR to regularize the services of (58) Assistant Executive Engineers appointed temporarily in the year 1987 in the Zones (as furnished by the ENC,PR vide his letter dt.29.07.2010), whose services regularised earlier based on the G.O.Ms.No.193, G.A.D., dated 14.3.1990.

8. In pursuance of the orders of the Hon'ble APAT., dt.12.04.2013 in OA No.11459/2009 and batch and OA Nos.9319/2010, 8598/2010, 1966/2011, 2593/2011 and 8092/2011, the Government have issued orders in G.O. 6th read above, cancelling the orders issued in G.O. Ms. No. 388, PR&RD (Estt.III) Dept., dt.12.11.2010 and requested the ENC, PR to implement the above Hon'ble APAT orders.

9. Aggrieved by the orders issued in the G.O.Ms. No. 262, PR&RD(Estt.III) Dept., dt.17.06.2006 & G.O. Ms.No.334, PR&RD (Estt.III) Dept., dt.26.09.2011, the 1997 APPSC batch AEEs filed W.P. No. 3909/2011 and batch. The Hon'ble High Court has issued interim orders to maintain "status-quo" to the extent of promotions.

10. In the representation 7th read above, the A.P. Panchayat Raj Asst. Executive Engineers Forum (1997 PSC Direct Recruitees) have requested the Government to safeguard the seniority rights of the regularly appointed AEEs of PSC batch and also to take necessary action to limit the implementation of G. O. Ms. No.262, PR&RD(Estt.III) Dept., dt.17.06.2006 & G. O. Ms.No.334, PR&RD(Estt.III) Dept., dt.26.09.2011 to finalize seniority of the 1997 PSC AEEs by keeping the temporary AEEs (1990-95) after last regular candidate as per the orders issued in the undisputed G.O.Ms.No.234, PR&RD(Estt.III) Deptt., dt.27.06.2005.

11. In the Govt. Memo. 8th read above, the Engineer–in-Chief, PR., A.P., Vijayawada has been requested to examine the issue and furnish a detailed report along with his specific remarks for taking further action in the matter.

12. In the letter 9th read above, the Engineer –in- Chief, PR., A.P., Vijayawada has furnished report stating that since the beginning of the department, as per past precedents in all similar issues, the AEEs/AEs appointed on temporary basis were regularized from the date of issue of their regularization orders placing them next to the regular recruited candidate through the APPSC. He has further stated that after issue of G.O.Ms.No.262 PR&RD Dept., dt.17.06.2006 legal disputes arose and W.P. No. 3909/2011 and batch cases were filed by Sri B.Sivaprasad and others before Hon'ble High Court. The Hon'ble High Court has issued orders to maintain status-quo to the extent of promotions until further orders. Therefore, it is not possible to settle the seniority of the aforesaid temporary and regular (PSC) A.E.Es.

13. The ENC, PR has further stated that all the individuals in the seniority list of A.E.Es. upto 1992 PSC batch were promoted as Dy.E.Es and the seniority beyond Public Service Commission 1992 batch i.e. 1990, 1994 batch and 1997 batch is not taken up due to dispute between them in the Hon'ble High Court and it is inevitable to prepare further seniority of A.E.Es. He has therefore requested the Government to examine the issue keeping in view of pending Court cases and interim orders issued in W.P. 3909 of 2011 and batch, and the orders issued in the G.O.Ms.No.193, GAD,

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dt.14.03.1990, G.O.Ms.No.388, PR&RD (Estt.III) Deptt., dt.12.11.2010 and G.O.Ms.No.42, PR&RD (Estt.III) Deptt., dt.08.06.2016 in respect of 1987-88 temporary AEEs batch Vs 1989 PSC batch AEEs.

14. The Govt. have examined the proposal in consultation with the Advisory Departments and observed that as per Rule 16(a) of the A.P. State & Subordinate Service Rule, 1996, the regularization/re-regularization of temporary employees appointed as per Rule 10 should not affect the seniority of the in service regular candidates who were recruited as per the rule and already regularized.

15. Further, Rule 33(a) of AP State and Subordinate Service Rules specifies that seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.

16. The Supreme Court in V.Sreenivasa Reddy Vs. Govt., of Andhra Pradesh (1994(4) scale469) held that:-

> " Appointment/promotion must be in accordance with the Rules, direct recruitee takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed de hors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment, It would thus be clear that by operation of Special Rules and Rules, that PSC candidate gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while the temporary appointee under Rule 10(a)(I)(1) who is subsequently appointed in accordance with the Rules, the temporary service rendered prior to his appointment shall not be counted towards his seniority or the temporary service even if counted towards probation shall not be counted for the purpose of seniority, The entire length or temporary service cannot be computed for the purpose of determining seniority under Rule 33(a) , the appellants cannot claim seniority over the PSC Candidates"

17. The Supreme Court in Registrar General of India Vs. V.Thippa Setty 1998 (8)SCC 690 held that:-

> "If the ad hoc service is regularised from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularisation must take effect prospectively and not retrospectively. It must also be borne in mind that ad hoc appointees, casual labour and daily-rated persons are not subject to strict discipline of service and it is a matter of common experience that their attendance is very often not regular and at times they do not even meet the qualification for appointment since they are taken on ad hoc basis. These deficiencies are overlooked by way of granting of relaxation and, therefore, care must be taken to see that they do not upset the seniorities of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularisation should be prospective and not retrospective as the chances of their upsetting the seniority cannot be overlooked.

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The Tribunal must take care to see that when they pass orders of regularisation from retrospective dates, those who are likely to be affected on account of that order are not before that court and unwittingly their careers are not adversely affected. Ordinarily, therefore, the regularisation must be prospective."

18. In light of the above, the Public Service Commission candidates take seniority from the date of their appointment in the cadre and regularisation of temporary appointment shall be prospective only and their services shall not be regularised with retrospective effect. Further, as per Rule 16 (a) of A.P. State & Sub-ordinate Service Rules, 1996 and also keeping in view of the orders issued in G.O.Ms. No.42, PR&RD (E.I) Deptt., dated 08.6.2016 and remarks of the Engineer-in-Chief, Panchayat Raj, Government observed that orders issued, in regularizing the service of the temporary AEEs batch who were appointed during 1990-95, in the G.O. Ms. No.262, P.R. & R.D (Estt.III) Deptt., dated 17.6.2006 and G.O.Ms.No.334, P.R. & R.D (Estt.III) Deptt., dated 26.9.2011, from the date of below the last regular Assistant Executive Engineer appointed through APPSC prior to Act 2/1994 and fixing their seniority before 1997 PSC batch AEEs have to be reviewed and decided to cancel the said orders, duly confirming their regularization as was ordered in the G.O. 2nd read above.

19. Accordingly, Government hereby cancel the orders issued in G.O. Ms. No.262, P.R. & R.D (Estt.III) Deptt., dated 17.6.2006 and G.O.Ms.No.334, P.R. & R.D (Estt.III) Deptt., dated 26.9.2011 and thereby fix the seniority of 1997 Public Service Commission batch AEEs before the temporary AEEs appointed during 1990-95, in Zone.I to Zone.IV, as was ordered in G.O. Ms.No.234, PR&RD(Estt.III) Dept., dt.27.06.2005, subject to outcome of the W.Ps pending in the High Court of Andhra Pradesh.

20. The Engineer–in-Chief, Panchayat Raj, AP, Vijayawada shall take further necessary action in the matter, accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

GOPAL KRISHNA DWIVEDI
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Engineer-in-Chief, PR, AP, Vijayawada.
Copy to:
The General Administration (Ser.E) Department.
The Law (F) Department.
The Secretary to APPSC, Vijayawada.
The PS to Secretary to Chief Minister.
The OSD to Minister for PR&RD.
The OSD to Chief Secretary.
The PS to Prl. Secy. (PR&RD).
The Government Pleader (Ser.), High Court of Andhra Pradesh, Amaravati.
File (Comp. No.117236).
SF/SCs.

//FORWARDED :: BY ORDER//

SECTION OFFICER